



Online Merchants Guild

Wayfair Implementation and Marketplace Facilitator Work Group

Comments

August 23, 2018

- Online Merchants Guild (“OMG”) is a trade association representing our community of millions of online merchant businesses worldwide.
- OMG officially launched in March of 2018, just in time to submit its amicus brief in the Wayfair case.
- OMG members do not include the marketplace operators, large retail websites, or other sales channel platforms (e.g. as Shopify).
- OMG members range from those (few) merchants that annually gross over \$100,000,000, to the vast majority of merchants that gross less than \$1,000,000, and with profit margins that are typically less than ten percent.
- OMG was created to give the online merchant community a voice in eCommerce law and policy matters, such as taxation.
- OMG supports 100 percent tax collection on all marketplace sales by sellers worldwide.
- OMG believes that the only sensible way to attain 100% marketplace tax collection is to require marketplaces to collect sales tax.
- OMG believes effective tax regimes and burden free eCommerce are not mutually exclusive.
- OMG wishes to collaborate with the MTC and its member states in the hopes that such collaboration will lead to sensible tax policies that won’t compromise state tax revenues, and are compatible with our ever-changing eCommerce economy.

Preventing Sales Tax Fraud Via Marketplace Collection

- Without Marketplace Collection States are Highly Susceptible to Sales Tax Fraud
- Example of Potential Fraud Scheme
 1. Fraudster creates new company, "FRAUDCO" files for FEIN and registers for sales tax collection.
 2. Fraudster opens a new Marketplace seller account, registering it under FRAUDCO
 3. FRAUDCO sources well ranked products that will drive high sales velocity, especially when products are competitively priced below market value
 4. FRAUDCO quickly attains substantial sales volume, as its products are priced to be below market, including tax
 5. FRTAUDCO pricing is sustainable because it will recoup losses via the sales tax it collects but does not remit to the states
 6. FRAUDCO may also use multiple accounts to flood the market with similar below market price goods in order to suppress competition, thereby maximizing its sales velocity/volume.
 7. FRAUDCO may also deal in counterfeit goods and the sales tax fraud is the icing on the cake
 8. During this time Amazon will hold FRAUDCO's funds for two weeks, at which time it will electronically transfer the sales proceeds, including sales tax, into fraudster's Amazon linked bank account
 9. After tax is transferred to seller as part of the sales proceeds, there is no accountability for ensuring the taxes are actually remitted
 10. After receiving the funds from Amazon, Fraudco subsequently moves funds from Amazon via a network of foreign bank accounts, or even more likely crypto-currency accounts, making funds untraceable
 11. FRAUDCO is likely one piece of a large scale sales tax fraud ring, with multiple seller accounts be used to perpetuate the fraud



Sales Tax Fraud is Most Likely Prevalent In The Marketplaces

- Incentive to engage in this type of sales tax fraud is high as there is very little risk of being caught
 - Sales tax fraudsters are most likely operating in a foreign country
 - Sales tax fraudsters are experts at hiding behind a vast number of US and foreign entities, as well as multiple marketplace accounts; they are essentially untraceable
- Lack of internal controls, low risk of getting caught, zero accountability for taxes once disbursed to the fraudster, and a highly lucrative opportunity makes for the perfect fraud recipe
- Sophisticated sales tax fraud enterprises are probably already operating around the world, and will continue to operate unless marketplaces are required to collect sales tax
- Similar VAT fraud rings have been found in Europe.
- Tax fraud schemes involving transaction taxes are known to fund terrorist activities worldwide. This has been well documented by VAT fraud experts around the world, including former New Hampshire Department of Revenue Attorney and NYU VAT professor, Richard Ainsworth. Ainsworth is considered to be the leading US authority on VAT fraud and has written extensively on how VAT fraud is being used to fund terrorism.
- See Ainsworth, Richard *VAT Fraud and Terrorist Funding -- The Azizi Extradition Allegations Part I* (<https://bit.ly/2MLn3Pt>)



Overlooking the Obvious Why Marketplaces Must Collect Tax

When Marketplaces Collect States Will

- Instantly mitigate future financial losses resulting from to uncollected use tax
- Avoid fueling a competitive tax advantage for foreign based sellers that sell into the US, as such sellers have little regard for the consequences of not collecting sales tax
- Actually level the local retail playing field
 - Wayfair did not level the playing field – Amazon and other marketplaces still don't collect sales tax
 - Tax motivated shoppers have less choice, but can still buy products tax free via the “marketplace” exception that states have allowed marketplaces like Amazon to escape tax collection on over half of its retail sales
- **Promote interstate commerce as opposed to unduly burdening it**
 - Online merchants cannot afford national tax compliance, and given the obvious and less burdensome alternatives it makes no sense to require them to collect.
 - It's substantially less burdensome for marketplaces to do collect, and states that have already implemented such rules have proven that it is possible and pain-free to implement.
 - States that have little concern about burdens placed on out-of-state e-commerce businesses should consider the impact that sister states placing similar burdens on local businesses will have on their local economy of ecommerce merchants, especially those that employ locally and who sustain main street businesses by also operating as an online business.
 - Individual sales tax enforcement will only cause states to realize that foreign sellers now have an edge over domestic since they have little regard for the sales tax rules, and will choose not to comply in order to maintain a competitive advantage.



Overlooking the Obvious

Why Marketplaces Must Collect Tax (cont'd)

- **Marketplace collection avoids states having to defend against future taxpayer constitutional and statutory challenges:**
 - Wayfair was a Prong 1 matter only. Anticipates future burden challenges, particularly from smaller businesses (Prong 3 Challenge)
 - Due process nexus for Amazon FBA sellers is highly questionable
 - State agreements with Amazon not to collect from its online marketplace doesn't allow
 - National sales tax compliance is expensive, especially for the majority of kitchen table enterprises
 - It's an unnecessary cost given the obvious and less costly alternatives (Pike v. Bruce Church)
- **The 200 transaction test will fail:**
 - Marketplace sellers are essentially merchants. Amazon's economic presence is what drives marketplace sales
 - Therefore transactions in every state is not hard for most full time merchants
 - The average Amazon item sells for approximately \$28.00, meaning economic nexus could be achieved with as little as \$5,600 in sales in a single state.
 - Sellers could be subject to national collection obligations with merely \$300,000 in GROSS sales nationwide
- **State agreements with Amazon not to collect from its online marketplace are illegal, unconstitutional and unenforcable :**
 - States cannot waive their obligation to require retailers to collect sales tax via closing agreements. (e.g. Per the Mississippi DOR "Any sales made by a third-party independent seller, even though made through the Amazon marketplace, are not covered under the [Amazon closing] agreement."
<https://bit.ly/2BJQqh3>)
 - If a marketplace truly operates as a retailer under state law, the state is obligated to require them to collect tax.
 - It's selective enforcement
 - By not enforcing the law evenly against all retailers states are facilitating an unfair price advantage that allows one company to sell goods cheaper than other businesses



Overlooking the Obvious Why Marketplaces Must Collect Tax (cont'd)

Recap

Requiring Marketplaces to Collect Will:

- Instantly Level the Playing Field; brick and mortar Retailers Can Finally Compete With Amazon on price
- Instantly stop further use tax losses
- Instantly remove the sales tax burden on small online businesses – reducing the likelihood of post-Wayfair constitutional challenges
- Instantly Prevent Future Sales Tax Fraud
- **Instantly Stop Sales Tax Fraudsters From Fund Global Terrorist Activities!**



Online Marketplaces Operate as Retailers And Should Already be Collecting Tax

- The following infographics were developed to highlight many of the lesser facts about what selling on Amazon is really like
- These infographics support OMG's position that claims by marketplaces, such as Amazon, that they are merely an online equivalent of offline marketplaces, flea-markets or shopping malls is false
 - State tax laws have always been substance over form (e.g. every income tax transfer pricing case)
 - Marketplaces like Amazon walk and talk like a retailer; sellers aren't even allowed to "own the customer" in the same sense that all other retailers in the are normally able to
 - Policies that allow businesses to avoid sales tax collection merely by dictating in their supplier contracts that they are merely marketplaces, and the suppliers the sellers, would open the floodgates for legal sales tax avoidance, both online and offline (e.g. why couldn't a big box retailer copy the Amazon "seller" model and start calling its store a marketplace and avoid sales tax (e.g. Sold by Apple – Facilitated by Costco).
 - *"To permit such formal 'contractual shifts' to make a constitutional difference would open the gates to a stampede of tax avoidance."* Scripto v. Carson, 362 U.S. 207 (1960)
- In light of the following infographics we ask that the Wayfair Implementation and Marketplace Facilitator Work Group address whether their treatment of Amazon as a marketplace is consistent with current state tax laws



TRUE MARKETPLACE VS AMAZON MARKETPLACE





AMAZON MARKETPLACE : FORM OVER SBUSTANCE

APPROX. 40-45% OF AMAZON ORDERS DO NOT CHARGE SALES TAX BECAUSE
AMAZON CLAIMS IT'S NOT THE SELLER¹

Amazon.com-owned product

3rd party supplier ("FBA Supplier")

Epson T252220 (252) DURABrite Ultra Ink, Cyan (EPST252220)
\$22.58
Quantity: 1 [Change](#)
Sold by: **Amazon.com**
[Add a gift receipt](#)
and see other gift options

[Submit order for approval](#)
By placing your order, you agree to Amazon's [privacy notice](#) and [conditions of use](#).

Order Summary
Items: \$22.58
Shipping & handling: \$10.08
Total before tax: \$32.66
Estimated tax to be collected: **\$1.53**
Order total: \$34.19

Taxed

Epson T252220 (252) DURABrite Ultra Ink, Cyan (EPST252220)
\$21.99
Quantity: 1 [Change](#)
Sold by: **Company**
[Add a gift receipt](#)
and see other gift options

[Submit order for approval](#)
By placing your order, you agree to Amazon's [privacy notice](#) and [conditions of use](#).

Order Summary
Items: \$21.99
Shipping & handling: \$10.07
Total before tax: \$32.06
Estimated tax to be collected: **\$0.00**
Order total: \$32.06

Not taxed

Amazon states that sales of 3rd party-owned items are not its sales obligated to pay tax on those orders. Amazon relies on the FORM of its adhesive contracts with sellers, despite the SUBSTANTIVE reality that it truly is the retailer.

1. Source: Capital Forum, Vol.5,No.96. March 21, 2017.



FBA CLAIMS TO BE MERELY A MARKETPLACE BUT IT OPERATES AS A RETAILER IN ALL RESPECTS

Whether Amazon sells its own or FBA supplied products, Amazon controls 100% of the customer transaction & experience



- FBA supplied items sent to Amazon's warehouses and are essentially sold on consignment



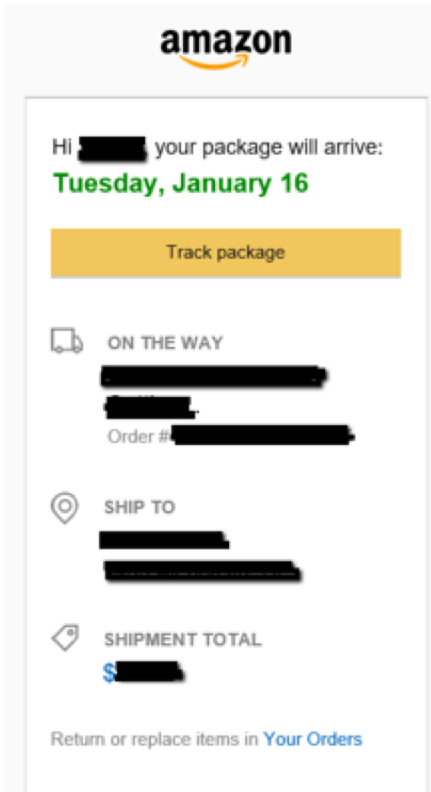
- Amazon handles all payments processing & receives funds on ALL orders
- After the FBA supplied product sold, Amazon pays a portion of the sale to the FBA supplier



- Amazon handles order details such as:
- Payments
 - Order confirmation & tracking
 - Customer service
 - Order refunds & returns



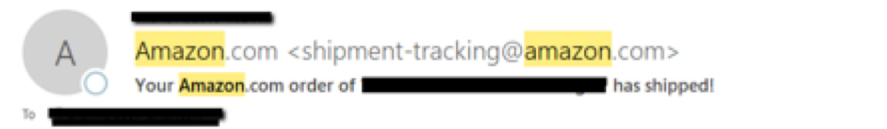
- Amazon controls the shopping experience:
- Amazon branding:
 - Ubiquitous Amazon logos
 - Packaging
 - Emails
 - Return policy & customer disputes
 - Product listings
 - FBA suppliers lack access to customers



Amazon Wants the FBA & 1p Experience to be the Same for the Consumer

← Amazon branded shipping boxes

Amazon branded communications & order tracking info →





THE INFORMATION CONTAINED IN THIS DOCUMENT IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY, AND CANNOT BE RELIED UPON FOR ANY PURPOSE, OR CONSTRUED AS LEGAL ADVICE PERTAINING TO ANY MATTER.

AMAZON AND FBA SELLERS OFTEN SELL THE SAME ITEM - ONLY COLLECTS TAX WHEN AMAZON IS LISTED AS SELLER

amazon try Prime


Home & Kitchen keurig

Shop Valentine's Day Gifts

Departments Your Amazon.com Today's Deals Gift Cards Registry Sell Help

Amazon Home Shop by Room Home Décor Furniture Kitchen & Dining Bed & Bath Garden & Outdoor Home Improvement

Back to search results for "keurig"



Keurig

Keurig K55/K-Classic Coffee Maker, K-Cup Pod, Single Serve, Programmable, Black

★★★★☆ 7,030 customer reviews | 834 answered questions

#1 Best Seller in Single-Serve Brewers

List Price: \$99.99
Price: **\$84.52** & FREE Shipping. Details
You Save: \$15.47 (15%)

In Stock.

Want it Monday, Feb. 5? Order within **14 hrs 48 mins** and choose **Priority Shipping** at checkout. Details

Ships from and sold by **Amazon.com**. Gift-wrap available.

Share

Buy new: **\$84.52**

Add a Protection Plan:

☐ 4-Year Protection for \$5.74
☐ 3-Year Protection for \$5.14

Add to Cart

Turn on 1-Click ordering for this browser

Ship to:

Amazon.com Product

amazon try Prime


Home & Kitchen

Shop Valentine's Day Deals

Departments Your Amazon.com Today's Deals Gift Cards Registry Sell Help

Amazon Home Shop by Room Home Décor Furniture Kitchen & Dining Bed & Bath Garden & Outdoor Home Improvement

Back to results



Keurig

Keurig K55/K-Classic Coffee Maker, K-Cup Pod, Single Serve, Programmable, Black

★★★★☆ 7,030 customer reviews | 834 answered questions

#1 Best Seller in Single-Serve Brewers

Price: **\$106.99** & FREE Shipping. Details

In Stock.

Want it Monday, Feb. 5? Order within **13 hrs 47 mins** and choose **Priority Shipping** at checkout. Details

Sold by **One Plus Tech Inc** and Fulfilled by Amazon. Gift-wrap available.

Share

Qty: 1

Add to Cart

Turn on 1-Click ordering for this browser

Ship to: mililani, 96789


FBA Merchant Product



AMAZON HANDLES CUSTOMER PAYMENTS AND CREDIT CARD PROCESSING FOR BOTH TYPES OF ITEMS


Once the customer buys the item, Amazon receives payment and ships it to the customer

3 Review items and shipping



Get a \$10 reward from Amazon Restaurants by choosing **FREE No-Rush Shipping** below
Choose **FREE No-Rush Shipping** and receive a \$10 reward to use at Amazon Restaurants (www.amazon.com/restaurants). Restaurants you love, delivered by Amazon.

Estimated delivery: Aug. 3, 2018
Items shipped from Amazon.com




Keurig K55/K-Cup Pod, Single Serve, Programmable, Black
\$99.99 ✓prime
Qty: 1 ▾
Sold by: OEDWNY
Only 5 left in stock.
[Add a gift receipt](#)
and see other gift options
[Conceal Package Contents](#)

Choose your Prime delivery option:

- ☐ 1 business day
\$23.98 - One-Day Shipping
- ☐ Thursday, Aug. 2 - Friday, Aug. 3
FREE Two-Day Shipping
Ship each item as soon as possible
- ☒ Friday, Aug. 3
FREE Delivery in fewest possible packages
- ☐ Tuesday, Aug. 7 - Wednesday, Aug. 8
FREE No-Rush Shipping
Get a \$10 reward to use at Amazon Restaurants. [Details](#)

Guaranteed delivery date: Aug. 3, 2018 If you order in the next 19 hours and 15 minutes ([Details](#))
Items shipped from Amazon.com



Keurig K55/K-Cup Pod, Single Serve, Programmable, Black
\$99.99 ✓prime
Qty: 1 ▾
Sold by: Amazon.com Services, Inc.
[Add a gift receipt](#)
and see other gift options
[Conceal Package Contents](#)

Place your order

By placing your order, you agree to Amazon's [privacy notice and conditions of use](#).

Order Summary

Items (2):	\$199.98
Shipping & handling:	\$0.00
Total before tax:	\$199.98
Estimated tax to be collected:	\$6.35
Order total:	\$206.33

[How are shipping costs calculated?](#)
Prime shipping benefits have been applied to your order.

Both products were identically priced at \$99.99 making the total amount due in the single retail shopping cart \$199.98.

With a Connecticut tax rate of 6.35%, the tax collected of \$6.35 is only being applied to one of the two shopping cart items, despite the fact that the sale is consummated in the same transaction.

How can Amazon only be a retailer for one of two items sold in a single check out?


Even when an item Amazon sells and an FBA item are purchased in the same shopping cart, Amazon claims it is only the retailer for one of the two items, even though the checkout process is through Amazon. Via this false distinction, Amazon is only charging state tax on the item it lists itself as the seller, and not it credits to the third party, despite being a singular retail transaction for the consumer.

THE INFORMATION CONTAINED IN THIS DOCUMENT IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY, AND CANNOT BE RELIED UPON FOR ANY PURPOSE, OR CONSTRUED AS LEGAL ADVICE PERTAINING TO ANY MATTER.



AMAZON HANDLES CUSTOMER PAYMENTS AND CREDIT CARD PROCESSING FOR BOTH TYPES OF ITEMS


Whether buying from Amazon or an FBA Merchant, Amazon receives payment and ships the product directly to the customer



SIGN IN SHIPPING & PAYMENT GIFT OPTIONS PLACE ORDER

Review your order

Estimated delivery: Feb. 8, 2018
Items shipped from Amazon.com




Instant Pot DUO Plus 60, 6 Qt 9-in-1 Multi- Use Programmable Pressure Cooker, Slow Cooker, Rice Cooker, Yogurt Maker, Egg Cooker, Sauté, Steamer, Warmer, and Sterilizer
\$129.95 ✓prime
Qty: 1
Sold by: Amazon.com Services, Inc.

Choose your Prime delivery option:

- ☐ Monday, Feb. 5
\$16.99 - Priority Shipping
- ☐ Wednesday, Feb. 7
\$10.99 - Expedited Shipping
- ☒ Thursday, Feb. 8
FREE Standard Shipping


Amazon-owned item



SIGN IN SHIPPING & PAYMENT GIFT OPTIONS PLACE ORDER

Review your order

Estimated delivery: Feb. 8, 2018
Items shipped from Amazon.com



Instant Pot DUO Plus 60, 6 Qt 9-in-1 Multi- Use Programmable Pressure Cooker, Slow Cooker, Rice Cooker, Yogurt Maker, Egg Cooker, Sauté, Steamer, Warmer, and Sterilizer
\$140.00 ✓prime
Qty: 1
Sold by: GDN14

Choose your Prime delivery option:

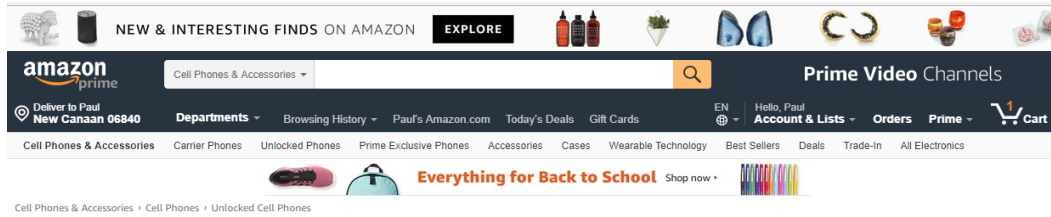
- ☐ Monday, Feb. 5
\$16.99 - Priority Shipping
- ☐ Wednesday, Feb. 7
\$10.99 - Expedited Shipping
- ☒ Thursday, Feb. 8
FREE Standard Shipping

FBA Supplier-owned item

Whether sold by Amazon.com or by a FBA merchant, the order is completed (i.e. checkout, payment processing, returns and customer service) via Amazon's website. Proceeds for FBA merchants are typically held by Amazon for two weeks, and used to offset potential buyer claims against the seller, which are decided at Amazon's discretion. FBA merchants can't refuse to take back an item, and are often forced by Amazon to take back items well beyond the Amazon mandated return policy of 30 days.



ONLY AMAZON CAN BENEFIT From Cross-Selling In An FBA Transaction



Apple
Apple iPhone 8 4.7", 64 GB, Fully Unlocked, Gold
★★★★☆ 48 customer reviews
152 answered questions

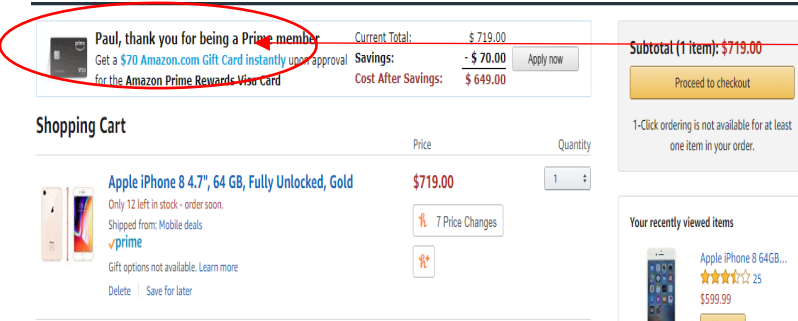
Price: \$719.00 ✓prime
Get \$70 off instantly: Pay \$649.00 upon approval for the Amazon Prime Rewards Visa Card.

Color: Gold
Size: 64 GB
64 GB 256 GB

- 4.7-Inch (diagonal) widescreen LCD multi-touch display with IPS technology and Retina HD display
- Splash, water, and dust resistant
- 12MP camera with Optical image stabilization and Six-element lens
- 4K video recording at 24 fps, 30 fps, or 60 fps
- All new glass design with A color-matched, aerospace-grade aluminum band

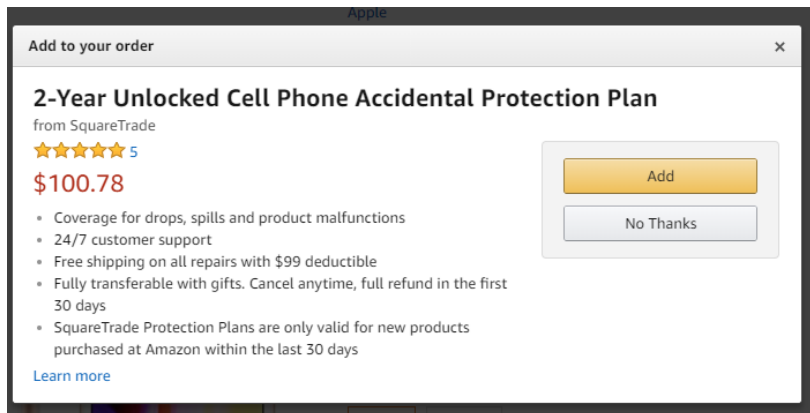
Buy New \$719.00
✓prime
FREE Delivery by Wednesday if you order within 13 hrs 1 min.
Details
Transportation regulations restrict this item to ground shipping.
Only 12 left in stock - order soon.
Ships from and sold by Mobile deals.
Qty: 1
\$719.00 + Free Shipping
Add to Cart
Buy Now
1-Click ordering is not available for this item.

Only mention of 3p Merchant



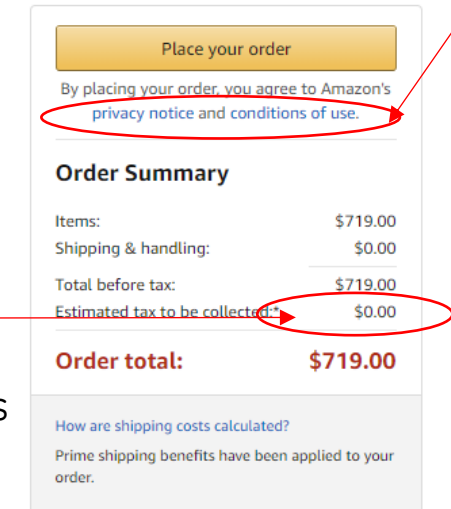
Amazon Store
Branded Credit Card
Offer - 3p
Merchants Can't
Extend Own Line of
Credit

Note:
Customer is bound by
Amazon's
Terms and
Conditions,
and has no
privity of
contract with
3p Merchant



Amazon Offers 3p
Warranty, Not
"Seller"

Despite all of this
Amazon doesn't
collect sales tax
because it claims it
isn't a retailer in this
situation



Amazon Capitalizes on Its Perceived Sales Tax Loophole

Takes Tax Into Account And Ensure Customer Knows When Tax Free Options Are Available

The screenshot shows the Amazon product page for 'Fantastic Beasts and Where to Find Them (2017)'. The price is \$11.99 with Prime. A red circle highlights the shipping and tax information: '\$11.99 ✓prime' and '+ \$0.00 estimated tax'. The condition is 'New'. The seller is 'Bridge_Media' with a 99% positive rating. The delivery is 'FULFILLMENT BY AMAZON'. The shipping options are 'Back-ordered. Due in stock August 8 -- order now to reserve yours' and 'Free Two-day Shipping'. The shipping rates and return policy are also shown.

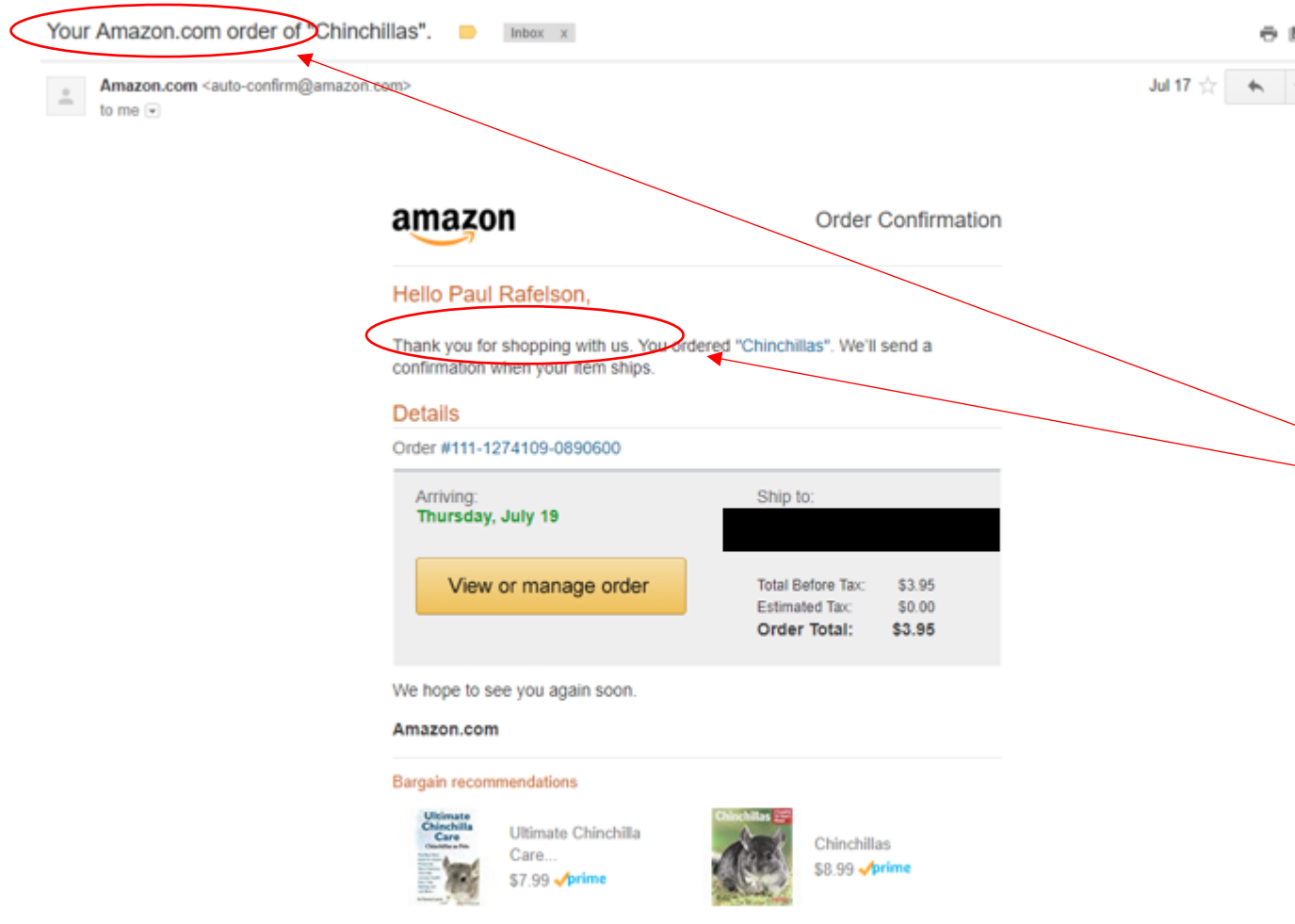
Amazon uses terms like “shipped from” a thinly veiled attempt to dress itself up as a retailer in order to avoid obvious sales tax collection obligation

The screenshot shows the Amazon checkout page. The shipping address is 'Amazon Locker - Darien, 150 Ledge Rd at Whole Foods, Darien, CT 06820-4423'. The payment method is 'MasterCard ending in 2494'. The order summary shows the total as \$11.99. The estimated delivery is 'Aug. 14, 2018 - Aug. 17, 2018'. The items shipped from Amazon.com are 'Fantastic Beasts and Where to Find Them' by Eddie Redmayne, priced at \$11.99 with Prime. The seller is 'Bridge_Media' and it is 'In stock on August 8, 2018'. The delivery option is 'Tuesday, Aug. 14 - Thursday, Aug. 16' with 'FREE Standard Pickup'.

Even when FBA product is sold for pick up inside Amazon owned retail outlet and/or Amazon branded locker, Amazon still claims it's not a retailer



EXAMPLE: Amazon Customer Confirmation Email No Mention of FBA Seller



Confirmation Email: Amazon Takes All Credit For the Order, No Mention of FBA Merchant in Confirmation Email.



Pricing by Amazon

Amazon Offers Its Own Discounts on 3p Products Meaning Amazon Can Control the Price of 3p Items

amazon **try Prime**

Electronics Macbook Pro

Shop Back to School deals

Deliver to Norwalk 06850

Departments Your Amazon.com Today's Deals Gift Cards Registry Sell

Computers Laptops Tablets Desktops Monitors Computer Accessories PC Components PC Gaming Deals

Electronic accessories **\$10** & under with **FREE** shipping

Back to search results for "Macbook Pro"

Lower Priced Items to Consider

Apple MacBook Pro MLUQ2LL/A 13-inch...
★★★★☆ 31
\$1,389.89

Apple MacBook Pro 15" Laptop Intel Quad Core...
★★★★☆ 2
\$1,599.00

Apple MacBook Pro MJLQ2LL/A 15.4-Inch...
★★★★☆ 29
\$1,698.99 **prime**

Is this feature helpful?

Apple
Apple 15 Inch MacBook Pro (Retina Display, 2.2GHz Intel Core i7, 16GB RAM, 256GB Hard Drive, Pro Graphics) Silver, MJLQ2LL/A (Newest Version)
★★★★☆ 286 customer reviews
| 308 answered questions

Price: ~~\$1,949.00~~
Sale: **\$1,899.99** & **FREE Shipping**
Discount Provided by Amazon. [Details](#)

Item is eligible: **No interest if paid in full within 12 months** with the Amazon.com Store Card. [Apply now](#)

- PERFORMANCE: 2.2GHz Intel Core i7 processor with Turbo Boost up to 3.4GHz, the MacBook Pro delivers speedy performance. Includes 16 GB of memory so you can multi-task with power efficiency
- STORAGE: MacBook Pro is slim and sleek with a 256 GB SSD Storage. Featuring Intel Iris Pro Graphics, the MacBook Pro offers 64 MB of embedded DRAM

Qty: 1

\$1,899.99 + Free Shipping

Add a Protection Plan:

- ☐ SquareTrade 4-Year Tablet Accidental Protection Plan (\$1750-1999.99) for **\$154.37**
- ☐ 2-Year Accident Protection for **\$149.99**

This item is sold by a third-party seller. The discount is provided by Amazon.
This is a limited time discount.
Discount does not apply to digital content.
Discount good while supplies last or until withdrawn by Amazon.
Shipping charges and taxes may apply to pre-discounted prices.
Amazon reserves the right to modify or cancel the discount at any time.
If any of the products or content related to this discount are returned, your refund will equal the amount you paid for the product or content, subject to applicable refund policies.

Discount provided by Amazon



Prohibiting Sellers From Acting Like Retailers

FBA Terms and Conditions (Verbatim)

https://sellercentral.amazon.com/gp/help/external/help.html?itemID=200386250&language=en-US&ref=efph_200386250_cont_1801

Attempts to divert transactions or buyers:

- **Any attempt to circumvent the established Amazon sales process or to divert Amazon users to another website or sales process is prohibited.** Specifically, any advertisements, marketing messages (special offers) or "calls to action" that lead, prompt, or encourage Amazon users to leave the Amazon website are prohibited. This may include the use of email or the inclusion of hyperlinks, URLs, or web addresses within any seller-generated confirmation email messages or any product/listing description fields.

Unauthorized and improper business names:

Businesses with names that end in .com are prohibited because it could potentially divert customer to seek future sales outside of Amazon retail platform. What mall or flea market prevents retailers from using their businesses' legal name?

- Your business name (identifying your business entity on Amazon) must be a name that: accurately identifies you; is not misleading; and that you have the right to use (that is, the name cannot include the trademark of, or otherwise infringe on, any trademark or other intellectual property right of any person). Furthermore, **you can't use a business name that contains an email suffix such as .com, .net, .biz, and so on.**

Inappropriate email communications:

- **Unsolicited emails to Amazon customers (other than as necessary for order fulfillment and related customer service) and emails related to marketing communications of any kind are prohibited.**

Appropriate treatment of customer phone numbers:

Only FBA merchants that self-fulfill are allowed to receive phone number information, and are required to destroy it once transaction is complete.

- Amazon provides Professional sellers who fulfill their own orders access to customer phone numbers so that they can comply with carrier label requirements. If you receive this customer information, you are required to adhere to Amazon's customer personal information policy, which can be found in our [Seller Agreement](#).
- Please review the policy there and the guidance below to make sure that you are using customers' phone numbers correctly.

Proper treatment of customer phone numbers: Print on labels to comply with carrier requirements.

- **Dispose of any customer phone number data that you retain after you have processed the customers' orders.**
- Monitor who in your organization has access to customer phone numbers—protecting this data is your responsibility.

Improper treatment of customer phone numbers: Never contact a customer using their phone number. To contact a customer about their order, only use [Buyer-Seller Messaging](#). Please see our [Buyer-Seller Messaging FAQ](#) for more information.

- Never share customer phone information with an external party.
- Never pass along customer information of any kind, including phone numbers, outside of Buyer-Seller Messaging.
- **Direct email addresses:**
- **Buyers and sellers may communicate with one another via the [Buyer-Seller Messaging Service](#).**



Amazon FBA Return Policies

FBA Merchants Have No Autonomy

[https://sellercentral.amazon.com/gp/help/200379860?](https://sellercentral.amazon.com/gp/help/200379860?ref=olb)

- [Customer Returns for Orders Placed on Amazon](#) Amazon's return policies determine how FBA customer returns are handled and under what circumstances you may be eligible for a full or partial reimbursement for a return accepted by Amazon.
- **Important:** Amazon's decision to accept or decline a return and determinations of the condition of returned item is final.
- **Returns timeframe** In most cases, customers can request to return an item within 30 days of receiving it. Amazon may make case-by-case exceptions and accept return requests beyond 30 days of receipt.
- **Important:** Amazon does not reimburse for refunded items that cannot be returned by customers per our [returns policy](#), unless it is for a reason for which we take responsibility.
- Amazon does not accept responsibility nor reimburse for returned items that are damaged by a customer, subject to recall, are defective or in violation of Amazon policies, or other similar reasons. We add these items to your unfulfillable inventory when they are returned.



Breaking Amazon News (CNBC)

August 21, 2018

<https://cnb.cx/2OTOqV4>

“Some Amazon sellers are outraged over a new payment policy designed to attract more corporate buyers”

- *Amazon recently rolled out a new payment policy called “Pay by Invoice” so business customers can buy on the marketplace and have more time to pay their bills.*
- *“[S]ellers are worried that waiting 30 days for payment instead of getting paid every week or two will put them in a cash crunch.”*
- Amazon is forcing sellers to absorb 30 day invoice terms so that businesses can buy from marketplace
- It's not an opt-in and there is no opt-out
- Is this what traditional marketplaces impose on their retail do, is this how malls and flea markets treat their tenants?



Actual marketplaces such as malls don't prohibit shop owners from redirecting customer traffic to their online websites, or other off-marketplace locations

Conversely, if malls played by Amazon's rules these types of promotions would be prohibited under Amazon's Seller Terms and Conditions





Nexus Doesn't Determine Who Collects Sales Tax



1. Per above, Starbucks coffee is sold in many large retail outlets, such as Walmart and Costco.
2. Now assume all three have nexus in "State A."
3. Even though Starbucks has nexus in State A, it would only be accountable for State A sales tax collection in the first scenario depicted, when Starbucks Coffee being sold inside a Starbucks store.
4. In the two other instances it is Walmart & Costco's responsibility to collect tax in State A, since they are the retailer.



What Happens When FBA Sellers/Amazon Choose To Collect Tax

Order Payment for Order [REDACTED] details of this order		
Transaction date: Jun 1, 2018		
[REDACTED]		
Billing Country/Region US		
Product charges		
Clinical Anatomy Made Ridiculously Simple (MedMaster Series) (Rapid Learning & Retention Through the MedMaster)	Qty: 1	\$5.96
Other		
Product Tax:		\$0.41
Sales Proceeds		\$6.37
Amazon fees		
Closing fee:		-\$1.80
Referral Fee on Item Price:		-\$0.89
Sales Tax Service Fee:		-\$0.01
Change to your seller account balance		\$3.67

Sales tax collected is treated by Amazon as part of the "sales proceeds"

When merchants elect to have Amazon collect the tax, Amazon will treat the tax it collects as part of the gross sale proceeds.

The sales proceeds are then held by Amazon, typically for two weeks, during which time Amazon has the right to use the funds to offset any buyer claims, regardless of whether they are related to the transaction that resulted in tax collection.

By including sales tax proceeds in a buyer claims offset pool means that sales tax collected by Amazon could be diverted to settle an unrelated buyer claim and never disbursed to the seller for remittance to the state.



Online
Merchants
Guild

Questions?

paul@onlinemerchantsguild.org